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U.S. DISTRICT COURT OF S.D. CALIF.

BY: *EEC*

DEPUTY

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7
8 Attorneys for Plaintiffs Sumner D. Bearman,
Individually and on Behalf of All Others
9 Similarly Situated

10
11 **UNITED STATES DISTRICT COURT**
12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 SUMNER D. BEARMAN, Individually
14 And On Behalf of All Others Similarly
Situating,

15 Plaintiff,

16 v.

17 BANK OF AMERICA CORPORATION;
18 BANC OF AMERICA INVESTMENT
SERVICES, INC.; and BANC OF AMERICA
19 SECURITIES, LLC,

20 Defendants.

CIVIL ACTION NO.

08 CV 1115 J WMC

21 **CLASS ACTION COMPLAINT**
[Securities Exchange Act of 1934
and Rule 10(b)5 promulgated
thereunder]

REQUEST FOR JURY TRIAL

22 Plaintiff Sumner D. Bearman brings this action on his own behalf and on behalf of all others
23 similarly situated (collectively "Plaintiffs"), against Defendants Bank of America Corporation, Banc
24 of America Investment Services, Inc., and Banc of America Securities, LLC (collectively
25 "Defendants"), Plaintiff alleges on information and belief, except as to the allegations that pertain to
26 Plaintiff and his counsel, the following:

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INTRODUCTION

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3 1. This action is brought as a federal class action under Sections 10(b) and 20(a) of the
4 Securities Exchange Act of 1934 (the "Exchange Act"), and Rule 10(b)5 promulgated thereunder.

5 2. Plaintiff brings this class action pursuant to Rule 23 of the Federal Rules of Civil
6 Procedure on behalf of all persons or entities who purchased and continue to hold "auction rate
7 securities," ("ARS") as defined herein, offered for sale by and through the auspices of Defendants
8 between May 31, 2006 and February 13, 2008, inclusive (the "Class Period").

9 3. Defendants represented to investors that auction rate securities were equivalent to
10 cash or money market funds; were highly liquid safe investments for short-term investing; and were
11 suitable for individual investors as well as entities, with at least \$25,000 of available cash and as
12 little as one week in which to invest.

13 4. Defendants knew, but failed to disclose material facts about auction rate securities to
14 Plaintiff and the other Class Members. In particular, Defendants knew, but failed to disclose that
15 auction rate securities were not cash alternatives, but were instead, complex, long-term financial
16 instruments with 30 year maturity dates, or longer. Defendants knew, but failed to disclose that
17 auction rate securities were only liquid at the time of sale because Defendants were artificially
18 supporting and manipulating the auction market to maintain the appearance of liquidity and stability.
19 Defendants knew, but failed to disclose that auction rate securities would become illiquid in the
20 event that Defendants stopped maintaining the auction market. Defendants further failed to abide
21 by the disclosure and other requirements imposed upon them by terms of a Cease and Desist Order
22 entered into with the Securities & Exchange Commission in 2006, whose purpose was to remedy
23 existing and prevent further abuses in the auction rate securities market.

24 5. On February 13, 2008, 87% of all auctions of auction rate securities failed when
25 Defendants and other major broker-dealers did in fact refuse to continue to support the auctions.
26 As a result of the withdrawal of support by all of the major broker-dealers, including Defendants,
27 the market for auction rate securities collapsed, leaving the holders of more than \$300 billion
28 nationally in auction rate securities with no means of liquidating these investments, despite the fact

1 that Defendants had intentionally offered and sold ARS as a suitable alternative to money market
2 funds and other short term cash management vehicles. The illiquidity and subsequent write-downs
3 of value of these investments has proximately called substantial and continuing damages to all
4 Plaintiff/Class members.

5 THE PARTIES

6 6. Named Plaintiff Sumner D. Bearman at all times material to this action has been a
7 resident of the State of California, County of San Diego. Defendants purchased in his account
8 approximately \$2 million of investments in individual municipal bond ARS, in the circumstances
9 hereinafter described as common to the class, immediately prior to the collapse of the ARS system
10 in mid-February, 2008. Plaintiff has suffered the effects of the illiquidity and loss in value of his
11 investment funds which have been inflicted on the Plaintiff Class.

12 7. Defendant Bank of America Corporation is a North Carolina corporation
13 headquartered in Charlotte, North Carolina. Bank of America Corporation is a bank holding
14 company and a financial holding company registered under the Gramm-Leach-Bliley Act. Bank of
15 America Corporation conducts substantial business within this District.

16 8. Defendant Banc of America Investment Services, Inc. ("BAIS") is incorporated in
17 Florida and its principal executive offices are located in Charlotte, North Carolina. BAIS is
18 registered with the SEC as a broker-dealer pursuant to Section 15(b) of the Exchange Act and is a
19 member of the New York Stock Exchange ("NYSE") and the Financial Industry Regulatory
20 Authority ("FINRA"). BAIS is a wholly owned subsidiary of Bank of America Corporation. BAIS
21 conducts substantial business within this District.

22 9. Defendant Banc of America Securities, LLC ("BAS") is incorporated in Delaware,
23 and its principal executive offices are located in Charlotte, North Carolina. BAS is registered with
24 the SEC as a broker-dealer pursuant to Section 15(b) of the Exchange Act and is a member of the
25 New York Stock Exchange ("NYSE") and the Financial Industry Regulatory Authority ("FINRA").
26 BAS is a wholly owned subsidiary of Bank of America Corporation. BAS conducts substantial
27 business within this District.

28 10. Unless specifically noted, "Bank of America" refers collectively to Defendants Bank

1 of America Corporation, BAIS and BAS.

2 11. Defendants, the officers and directors of any Defendant, members of their immediate
3 families and their legal representatives, heirs, successors or assigns and any entity in which any
4 Defendants has or had a controlling interest are intended to be excluded from this Class.

5 **JURISDICTION AND VENUE**

6 12. This Court has jurisdiction over the subject matter of this action pursuant to 28
7 U.S.C. §§ 1331 and 1337, and Section 27 of the Exchange Act (15 U.S.C. § 78aa). The claims
8 asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and
9 78t(a)), and Rule 10b-5 promulgated thereunder by the Securities Exchange Commission ("SEC")
10 (17 C.F.R. 240.10b-5).

11 13. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28
12 U.S.C. § 1391(b), § 1337. As referenced, Defendants regularly conduct business within this
13 District, and many of the acts giving rise to the violations complained of herein took place in this
14 District.

15 14. In connection with the acts alleged in this Complaint, Defendants, directly or
16 indirectly, used the means and instrumentalities of interstate commerce, including, but not limited
17 to, the mails, interstate telephone communications and the facilities of the national securities
18 markets.

19 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

20 15. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
21 Procedure 23(a) and (b)(3), on behalf of a Class consisting of all persons and entities who
22 purchased auction rate securities from Bank of America between May 31, 2006 and February 13,
23 2008, inclusive, and continue to hold said securities. These securities have been rendered illiquid at
24 best and illusory/devalued at worst by the actions of Defendants as hereinafter delineated.

25 16. The members of the Class are so numerous that joinder of all members is
26 impracticable. The market for auction rate securities, while it existed, was estimated to exceed
27 \$300 billion in the United States. Bank of America was a significant underwriter and seller of
28 auction rate securities while the market for such securities existed. While the exact number of Class

1 members is unknown to Plaintiff at this time and can only be ascertained through appropriate
2 discovery, Plaintiff believes that there are thousands of members, individuals and entities, in the
3 proposed Class. Members of the Class may be identified from records maintained by Defendants
4 and may be notified of the pendency of this action by mail, using the form of notice similar to that
5 customarily used in securities class actions.

6 17. Common questions of law and fact exist as to all members of the Class and
7 predominate over any questions solely affecting individual members of the Class. Among the
8 questions of law and fact common to the Class are:

9 (a) Whether the federal securities laws were violated by Defendants' acts as
10 alleged herein;

11 (b) Whether statements made by Defendants to the investing public during the
12 Class Period misrepresented or omitted material facts about the liquidity of and risks associated
13 with auction rate securities and the market for such securities; and

14 (c) The manner in which members of the Class have sustained damages and the
15 proper measure of damages.

16 18. Plaintiff's claims are typical of the claims of the Class members. Plaintiff and the
17 Class members have all sustained damages as a result of Defendants' conduct. Moreover, Plaintiff's
18 entitlement to the relief prayed for is based on the same legal and factual theories as the other Class
19 members, thus satisfying the requirements of Fed.R.Civ.P. 23(a)(3).

20 19. Plaintiff will fairly and adequately protect the interests of the members of the Class
21 and has retained counsel competent and experienced in class and securities litigation, thus satisfying
22 the requirements of Fed.R.Civ.P. 23(a)(4).

23 20. In the alternative to F.R.C.P. 23(a), the Class may be certified under the provisions
24 of Fed.R.Civ.P. 23(b)(1) and/or 23(b)(2) because: (a) the prosecution of separate actions by
25 individual Class members would create a risk of inconsistent or varying adjudications with respect
26 to individual Class members which would establish incompatible standards of conduct for
27 Defendants; (b) the prosecution of separate actions by individual Class members would create a risk
28 of adjudications with respect to them which would, as a practical matter, be dispositive of the

interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and (c) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

FACTUAL ALLEGATIONS

21. Auction Rate Securities ("ARS") are securities whose interest or dividend rate is reset periodically. They usually have a long-term maturity (or, in the case of preferred securities, no maturity). They may be issued by municipalities or other authorities in the form of tax-exempt or taxable bonds, or by corporations (the "issuer") in the form of bonds or preferred stock.

22. There are three separate types of ARS, in general.

- (1) Municipals, known as MARS, which are issued by municipalities, cities and industrial development boards.
- (2) Student Loans, known as SLARS, issued by states which have established quasi-independent loan systems.
- (3) Auction Rate Preferred Securities issued by mutual fund companies such as Evergreen, Nuveen, Eaton Vance and Pimco, to provide financing at short-term interest rates to invest in other securities for the benefit of the common shareholders of closed end mutual funds.

23. Additional Definitions.

The following terms are used with limited exceptions, in Auctions of Auction Rate Securities.

Auction. A process in which Holders and Prospective Holders for an issue of Auction Rate Securities indicate their interest in continuing to hold or purchase such securities. The Auction Agent reviews all Orders and determines the lowest Rate that will result in the sale of all securities being auctioned in accordance with the applicable Auction Procedures.

Auction Agent. An agent of the issuer or the trustee for the Auction Rate Securities, usually a bank, such as Bank of America, which, under the Auction Procedures, receives Orders and determines the Clearing Rate and the allocation of Auction Rate Securities among Auction

1 participants.

2 *Auction Procedures.* The procedures governing the conduct of an Auction, usually
3 set forth in the indenture or resolution covering the securities and *summarized in the prospectus or*
4 *offering statement for the issue or in supplemental disclosure documents.* These documents,
5 despite their 2006 agreement, Bank of America failed to provide to investors.

6 *Bid.* A direction by a Holder or Prospective Holder specifying the principal amount
7 of Auction Rate Securities which (i) a Holder commits to continue to hold for the next succeeding
8 Rate Period if the Clearing Rate for such Rate Period is not less than the Rate per annum specified
9 in such Bid or (ii) a Holder or Prospective Holder offers to purchase if the Clearing Rate for the
10 next succeeding Rate Period is not less than the Rate per annum specified in such Bid. Note that in
11 clause (i) above, if the Clearing Rate is less than the Rate specified by a Holder, such Holder is
12 obligated to sell such Auction Rate Securities.

13 *Bidder.* Each Holder and Prospective Holder who places a Bid.

14 *Broker-Dealer.* A Broker-Dealer designated in a Broker-Dealer Agreement to
15 solicit Orders for Auction Rate Securities.

16 *Broker-Dealer Agreement.* The agreement between a Broker-Dealer, the Auction
17 Agent and the issuer under which a Broker-Dealer agrees to solicit Orders for Auction Rate
18 Securities.

19 *Failed Auction.* An Auction at which the Auction Agent does not receive sufficient
20 Orders at or below the specified Maximum Rate to purchase all the securities being sold. In the
21 case of a Failed Auction, the Rate is set at the Maximum Rate.

22 *Holders.* The persons who are then the beneficial owners of the Auction Rate
23 Securities; i.e., Plaintiffs.

24 24. The interest or dividend rate on Auction Rate Securities is reset periodically to the
25 rate produced in an Auction governed by a set of Auction Procedures, established by the issuer and
26 its Auction Agent and *described in the offering documents.* The frequency of the periodic auctions
27 varies, with common reset periods being daily, 7 days, 28 days, 35 days, 49 days and six months.

28 25. Investments in auction rate securities were initially limited to institutional investors,

1 with required minimums of \$250,000. Later, issuers and sellers of auction rate securities lowered
2 the minimum amount invested to \$25,000, in an effort to market ARS as widely as possible to the
3 general public, including individuals and small investors.

4 26. Billions of dollars of ARS were issued and sold to institutional, corporate, individual
5 investors as a safe money market-like investment, ostensibly liquid, but with a better short term
6 rate. In fact, ARS were difficult to value because they were usually unsaleable if no secondary
7 market existed.

8 27. The estimated national value of auction rate securities in existence (prior to the
9 collapse of the auction market) was approximately \$300 + billion.

10 28. The issuer of each auction rate security selected one or more broker-dealers to
11 underwrite the offerings and to manage the auction process. Investors could only submit orders
12 through the selected broker-dealers. The issuer paid an annualized fee to each broker-dealer, such
13 as Bank of America, engaged to manage an auction.

14 29. Bank of America uniformly represented to investors in its written materials and sale
15 presentations by financial advisors that auction rate securities were the same as cash and were
16 highly liquid, safe investments for short-term investing. Bank of America failed to disclose to
17 purchasers of auction rate securities material facts about these securities. Bank of America failed to
18 disclose that these securities were not cash alternatives, like money market funds, and were instead,
19 complex, long-term financial instruments with 30 year maturity dates, or longer. Bank of America
20 also failed to disclose that the auction rate securities it was selling were only liquid at the time of
21 sale because Bank of America and other broker-dealers in the auction market were artificially
22 supporting and manipulating the market to maintain the appearance of liquidity and stability. When
23 Bank of America and the other broker-dealers stopped artificially supporting and manipulating the
24 auction market, the market immediately collapsed and the auction rate securities sold by Bank of
25 America became illiquid.

26 30. Bank of America further failed to disclose to purchasers of auction rate securities
27 material facts about its role in the auctions and the auction market in which these securities were
28 traded. Bank of America failed to disclose that in connection with the sale of auction rate

1 securities, Bank of America simultaneously was acting on behalf of the issuer, who had an interest
 2 in paying the lowest possible interest rate, on behalf of the investor, who was seeking the highest
 3 possible return, and on its own behalf, to maximize the return to Bank of America on its holdings of
 4 the auction rate securities. Bank of America failed to disclose that it and other broker-dealers
 5 routinely intervened in auctions for their own benefit, to set rates and prevent all-hold auctions and
 6 failed auctions. Bank of America failed to disclose that without this manipulation of the auction
 7 market, many auctions likely would have failed, as a result of which investors would have had the
 8 ability to determine the true risk and liquidity features of auction rate securities.

9 31. Auction rate securities were extremely profitable for Bank of America and for the
 10 Bank of America financial advisors and brokers who sold the securities. As a large underwriter of
 11 auction rate securities, Bank of America was paid significant underwritten fees by issuers of the
 12 securities. Bank of America also acted as a principal for its own account, using its access to inside
 13 information about the auction process to buy and sell auction rate securities for its own account.

14 32. Broker-dealers would often engage in a number of practices to influence the auction
 15 process, including, for example, submitting their own orders to purchase or sell shares for their own
 16 accounts. In 2004, the SEC began to investigate these manipulative practices affecting the auction
 17 market. In May, 2006, the SEC entered into a Cease and Desist Order with a number of major
 18 broker-dealers, including Defendant Bank of America, which required them to disclose certain
 19 practices to investors and to stop engaging in certain other practices. The 2006 Order required
 20 Bank of America, in pertinent part, to do the following, as an affirmative obligation:

21 *"each Respondent shall, at or before the completion of the applicable transaction,*
 22 *provide all customers who are first-time purchasers, and all broker-dealers who are*
 23 *purchasers, of auction rate securities from the Respondent ("Purchasers") with a*
 24 *written description of the Respondent's material auction practices and procedures.*
 25 A Respondent may fulfill the foregoing requirements to provide such written
 26 description to Holders and Purchasers by sending a written notification (e.g., via
 27 e-mail, subject to applicable legal requirements) or, with respect to Purchasers, by
 28 including a written notification with the trade confirmation, that a written description
 of the Respondent's material auction practices and procedures is available on a
 specified web page of the Respondent's website accessible to such Holders and
 Purchasers." (emphasis added).

33. Despite its agreement to do so, Bank of America routinely failed to provide the
 notifications and disclosure materials required to its investors. Moreover, Bank of America

1 continued to aggressively market auction rate securities even after it had determined that it and
2 other broker-dealers were likely to withdraw their support for the periodic auctions and that a
3 "freeze" of the market for auction rate securities would result.

4 34. In fact, on February 13, 2008, 87% of all auctions of auction rate securities failed
5 when all of the major broker-dealers refused to continue to support the auctions decided to
6 withdraw their support of the auction market. As a result of the withdrawal of support by all of the
7 major broker-dealers, the market for auction rate securities has collapsed, rendering more than \$300
8 billion of outstanding securities illiquid.

9 35. During the Class Period, Defendants materially misled the investing public, thereby
10 allowing the auction market to continue and inflating the price of auction rate securities sold by
11 Bank of America by publicly issuing false and misleading statements and omitting to disclose
12 material facts necessary to make Defendants' statements, as set forth herein, not false and
13 misleading. Said statements and omissions were materially false and misleading in that they failed to
14 disclose material adverse information and misrepresented the truth about the auction market and the
15 auction rate securities sold by Bank of America, as alleged herein.

16 36. At all relevant times, the material misrepresentations and omissions particularized in
17 this Complaint directly or proximately caused or were a substantial contributing cause of the
18 damages sustained by Plaintiff and other members of the Class. As described herein, during the
19 Class Period, Defendants made or caused to be made a series of materially false or misleading
20 statements about the auction market and the auction rate securities sold by Bank of America. These
21 material misstatements and omissions had the cause and effect of perpetuating the auction market
22 and creating in that market an unrealistically positive assessment of the auction rate securities sold
23 by Bank of America, thus causing those securities to be overvalued and artificially inflated at all
24 relevant times. Defendants' materially false and misleading statements during the Class Period
25 resulted in Plaintiff and other members of the Class purchasing and continuing to hold auction rate
26 securities sold by Bank of America at artificially inflated prices, thus causing the damages
27 complained of herein.

28 37. The collapse of the auction rate securities market in February, 2008 was a direct

1 result of Defendants' unilateral decision to no longer artificially support the auction rate securities
2 market. These actions and omissions by Bank of America directly and proximately caused the
3 terrible financial situation, both with regards to liquidity and lost value, that the ARS market
4 collapse precipitated, and which continues to damage Plaintiffs.

5 **COUNT I**

6 **Violation of Section 10(b) of the Exchange Act**
7 **Against All Defendants**

8 38. Plaintiff realleges each and every allegation set forth in the paragraphs above as if
9 fully set forth herein. Plaintiff brings this cause of action on behalf of himself and the Class.

10 39. During the Class Period, Defendants carried out a plan, scheme and course of
11 conduct which was intended to and, throughout the Class period, did: (i) deceive the investing
12 public, including Plaintiff and other Class members, as alleged herein; (ii) enable Defendants to sell
13 hundreds of millions of dollars of auction rate securities to current and prospective Bank of
14 America clients, on which Bank of America made substantial commissions; and (iii) cause Plaintiff
15 and other members of the Class to purchase auction rate securities from Bank of America at
16 artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct,
17 Defendants, jointly and individually (and each of them) took the actions set forth herein.

18 40. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue
19 statements of material fact and/or omitted to state material facts necessary to make the statements
20 not misleading; and (c) engaged in acts, practices, and a course of business which operated as a
21 fraud and deceit upon the purchasers of auction rate securities from Bank of America in an effort to
22 maintain artificially high sales and market prices for such securities in violation of Section 10(b) of
23 the Exchange Act and Rule 10b-5. All Defendants are sued either as primary
24 participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged
25 below.

26 41. Defendants, individually and in concert, directly and indirectly, by the use, means or
27 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
28 continuous course of conduct to conceal adverse material information about the auction rate

1 and the other members of the Class acquired and continued to hold auction rate securities by Bank
2 of America during the Class Period at artificially high prices and were damaged thereby.

3 45. At the time of said misrepresentations and omissions, Plaintiff and other members of
4 the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other
5 members of the Class and the marketplace known the truth regarding the liquidity of and risks
6 associated with the auction rate securities sold by Bank of America, which were not disclosed by
7 Defendants, Plaintiff and other members of the Class would not have purchased and continued to
8 hold their auction rate securities or, if they had acquired such securities during the Class Period,
9 they would not have done so at the artificially inflated prices which they paid.

10 46. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange
11 Act, and Rule 10b-5 promulgated thereunder.

12 47. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the
13 other members of the Class suffered damages in connection with their respective purchases of
14 auction rate securities sold by Bank of America during the Class Period.

15 COUNT II

16 **Violation of Section 20(a) of the Exchange Act** 17 **Against Defendant Bank of America Corporation**

18 48. Plaintiff realleges each and every allegation set forth in the paragraphs above as if
19 fully set forth herein. Plaintiff brings this cause of action on behalf of himself and the Class.

20 49. Defendant Bank of America Corporation acted as a control person of Defendants
21 BAIS and BAS within the meaning of Section 20(a) of the Exchange Act as alleged herein. By
22 virtue of its 100% ownership of BAIS and BAS, Bank of America Corporation had the power to
23 influence and control and did influence and control, directly or indirectly, the decision-making by
24 BAIS and BAS, including the content and dissemination of the various statements which Plaintiff
25 contends are false and misleading. Bank of America Corporation was provided with or had
26 unlimited access to copies of the reports, press releases, public filings and other statements alleged
27 by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the
28 ability to prevent the issuance of the statements or cause the statements to be corrected.

50. As set forth above, BAIS and BAS violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of its position as a controlling person, Bank of America Corporation is liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchase and retention of auction rate securities from Bank of America during the Class Period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

- A. Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as a Class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;
- B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;
- D. Awarding extraordinary, equitable and/or injunctive relief as permitted by law, equity and the federal statutory provisions sued hereunder; and
- E. Such other and further relief as the Court may deem just and proper.

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JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Respectfully submitted,

RUSHALL & McGEEVER



Eileen L. McGeever

Dated: June 18, 2008

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**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

152191 - TC

**June 23, 2008
15:29:53**

Civ Fil Non-Pris

USAO #: 08CV1115

Judge.: NAPOLEON A JONES, JR

Amount.: \$350.00 CK

Check#: BC2299

Total-> \$350.00

FROM: SUMNER B. BEARMAN
VS.
BANK OF AMERICA

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Sumner D. Bearman

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Rushall & McGeever APLC
6100 Innovation Way
Carlsbad, CA 92009 (760) 438-6855

DEFENDANTS

Bank of America Corp. 08 JUN 23 PM 3:28

County of Residence of First Listed Defendant Charlotte, NC
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

08 CV 1115 J WMc

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|--|---|---|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. Section 78 et seq.

Brief description of cause:

Securities fraud class action

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ According to proof

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

6-18-08

SIGNATURE OF ATTORNEY OF RECORD

Eden H. H.

FOR OFFICE USE ONLY

RECEIPT #

152191

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

TAC 6/23/08

CR